

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7135-E
)	CSR 7162-E
Petitions for Determination of Effective)	
Competition in 50 Communities in Illinois)	

MEMORANDUM OPINION AND ORDER

Adopted: May 25, 2011

Released: June 1, 2011

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC (“Comcast” or the “Company”), has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that the Company is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Comcast alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”), and, in one Community, Wide Open West (“WOW”).³ Oppositions to the petitions were filed by three groups of local governments in nine of the Communities (collectively, “Opponents”).⁴ Comcast filed a separate reply to each group.⁵

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁶ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁷ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ Petition in 7162-E at 2 n.7

⁴ In CSR 7135-E, five local governments (for the Villages of Bloomingdale, Carol Stream, Itasca, Roselle, and Wood Dale) filed a Response to Comcast’s Petition for Special Relief (“Bloomingdale Opposition”) and three other local governments (for the Villages of Brookfield, Franklin Park, and Glendale Heights) filed a Response in Opposition to Petition for Special Relief (“Brookfield Opposition”). In CSR 7162-E, one local government (the Village of South Barrington) filed a Response in Opposition to Petition for Special Relief (“South Barrington Opposition”).

⁵ In 7135-E, Comcast’s replies were titled Reply to Response (“Bloomingdale Reply”) and Reply to Opposition to Petition for Special Relief (“Brookfield Reply”). In 7162-E, Comcast filed a Reply to Opposition to Petition for Special Relief (“South Barrington Reply”) and two letters correcting certain numerical errors in Exhibit 6 to the Petition.

⁶ 47 C.F.R. § 76.906.

⁷ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

within the relevant franchise area.⁸ For the reasons set forth below, we grant the petitions based on our finding that Comcast is subject to effective competition in the Communities listed on Attachment A.

II. THE COMPETING PROVIDER TEST

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁹ This test is referred to as the “competing provider” test.

A. The First Part of the Competing Provider Test

4. The first part of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.¹⁰ It is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Comcast or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.¹¹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second part of the competing provider test discussed below) coupled with the ubiquity of DBS service to show that consumers are reasonably aware of the availability of DBS service.¹² The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹³ and is supported in the petitions with copies of channel lineups for both DIRECTV and DISH.¹⁴ Also undisputed is Comcast’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹⁵ None of the Opponents disputes any of the foregoing. Accordingly, we find that the first part of the competing provider test is satisfied.

⁸ See 47 C.F.R. §§ 76.906-.907(b).

⁹ 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

¹⁰ 47 C.F.R. § 76.905(b)(2)(i).

¹¹ See, e.g., Petition in CSR 7135-E at 3.

¹² *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹³ See 47 C.F.R. § 76.905(g). See, e.g., Petition in CSR 7162-E at 4.

¹⁴ See, e.g., Petition in CSR 7135-E at Exh. 2.

¹⁵ See, e.g., Petition in CSR 7162-E at 2-3.

B. The Second Part of the Competing Provider Test

5. The second part of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area.¹⁶

6. Comcast asserts that it is the largest MVPD in the Communities.¹⁷ It sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.¹⁸ WOW provided Comcast with its subscriber number in the Community of Elgin, Illinois.¹⁹ Comcast divided these MVPD subscriber numbers for each Community by the number of households there, which it obtained from Census 2000 data.²⁰ The calculations made with this data show that DBS and WOW subscribership in each Community is well in excess of 15 percent.²¹ If the foregoing evidence is accepted and there are no other issues, then Comcast has satisfied the second part of the competing provider test.

7. One group of Opponents in CSR 7135-E notes, correctly, that Comcast's petition does not state the Company's own numbers of subscribers in the Communities involved in that proceeding. These Opponents point to Section 76.905(f) of our rules, which concerns the competing provider test and provides that, for purposes of determining the number of households subscribing to the services of an MVPD other than the largest, "the number of subscribers of *all* [MVPDs] that offer service in the franchise area will be aggregated."²² These Opponents appear to believe that this rule requires that the households that Comcast serves in each franchise area be included in the number of households served by Comcast's competitors there. The Opponents object that Comcast has not made such an inclusive calculation.²³

8. These Opponents misunderstand the purpose and meaning of Section 76.905(f) of our rules. Originally, the Commission interpreted the second part of the competing provider test – in particular, the reference to MVPDs other than the largest MVPD – to refer to only MVPDs who were not the largest and who *also* met the criterion of the first part of the test – MVPDs offering service to at least 50 percent of the households in the franchise area.²⁴ The United States Court of Appeals for the District of Columbia Circuit reversed the Commission on this point, holding that all MVPDs other than the largest must be counted in the second part of the competing provider test.²⁵ The Commission adopted the present wording of subsection (f) to implement the Court's ruling.²⁶ Subsection (f) was not intended to require

¹⁶ 47 U.S.C. § 543(l)(1)(B)(ii); *see also* 47 C.F.R. § 76.905(b)(2)(ii).

¹⁷ *See, e.g.*, Petition in CSR 7135-E at 5.

¹⁸ *See, e.g.*, Petition in CSR 7162-E at 5.

¹⁹ *Id.* at Exh. 5.

²⁰ *See, e.g.*, Petition in CSR 7135-E at Exh. 7.

²¹ *See, e.g., id.* at Exh. 6.

²² 47 C.F.R. 76.905(f) (*italics added*).

²³ Bloomingdale Opposition at 2.

²⁴ *Implementation of Section of the Cable Television Consumer Protection & Competition Act of 1992*, 8 FCC Rcd 5631, 5563, ¶ 36 (1993), *on reconsideration*, 9 FCC Rcd 4316, 4320-21, ¶¶ 5-7 (1994).

²⁵ *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 189-90 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1112 (1996).

²⁶ *Implementation of the Cable Television Consumer Protection & Competition Act of 1992*, 11 FCC Rcd 20206, 20209, ¶ 6 (1996).

summing all MVPDs, especially if one of them is Comcast and the purpose of the summing is to measure Comcast's competitors.²⁷ The Opponents have not explained the usefulness of such summing, and we can think of none. Accordingly, we reject the Opponents who object to Comcast's omission of its own customer numbers from the Petition in CSR 7135-E.²⁸

9. A second group of Opponents in CSR 7135-E and the sole Opponent in 7162-E object that, other than presenting the evidence described above, Comcast's petition does not establish that deregulation of rates for its basic service will serve the public interest in the Communities. The premise for this objection is that Section 76.7(a)(4)(i) of the Commission's rules requires that petitions for special relief about MVPD services "state fully and precisely all pertinent facts and considerations relied on . . . to support a determination that a grant of such relief would serve the public interest."²⁹ These Opponents claim that Comcast's petition is defective because it "fails to include a statement of public interest."³⁰ They also argue that deregulation cannot be in the public interest because competition from DBS systems does not constrain rate increases by cable systems.³¹

10. We dismiss the Opponents' objection, as we have dismissed several similar objections in previous decisions.³² In competing provider effective competition proceedings, the only issues are those specified in Section 623(l)(1)(B) of the Communications Act and stated in paragraph 3 above. The rule on which the Opponents rely applies to all special relief petitions and is principally a rule of form and procedure.³³ It does not add a broadsweeping "public interest" test that expands effective competition proceedings into free-ranging investigations beyond the two-part test mandated by Congress. The general words "public interest" in our rule cannot grant the Commission more authority than Section 623(l)(1)(B). Accordingly, we reject the proposal that we expand the scope of this proceeding to include its proposed "public interest" issues.

11. Despite the Opponents' objections, we find that Comcast has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. The calculations underlying this finding are set forth in Attachment A. Therefore, the second part of the competing provider test is satisfied for each of the Communities. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that both parts of the competing provider test are satisfied and the Company is subject to effective competition in the Communities listed on Attachment A.

²⁷ Bloomingdale Reply at 2-3.

²⁸ *Accord Comcast Cable Commun., LLC*, 23 FCC Rcd 12150, 12152, ¶¶ 7-8 (2008); *Comcast Cable Commun., LLC*, 23 FCC Rcd 12145, 12147, ¶¶ 7-8 (2008).

²⁹ 47 C.F.R. § 76.7(a)(4)(i); South Barrington Opposition at 2-3.

³⁰ Brookfield Opposition at 3.

³¹ South Barrington Opposition at 3-4.

³² *Comcast Cable Commun.*, Memorandum Opinion & Order DA 11-496 at ¶ 24 (rel. March 18, 2001), *available at* 2011 WL 933540; *Comcast Cable Commun., LLC*, Memorandum Opinion & Order DA 11-429 at ¶ 14 (rel. March 4, 2011), *available at* 2011 WL 765080; *Comcast Cable Commun., LLC*, 25 FCC Rcd 13340, 13343-44, ¶¶ 12-14 (2010). *See also Cablevision Systems East Hampton Corp.*, 24 FCC Rcd 10846, 10849-50, ¶¶ 12-13 (2009).

³³ Brookfield Reply at 2-3; South Barrington Reply at 2-3.

III. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **ARE GRANTED**.

13. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

14. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

³⁴ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 7135-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2000 Census Households	Estimated Competing MVPD Subscribers
CSR 7135-E				
Addison	IL0476	26.59%	11649	3098
Bedford Park	IL0313	21.04%	211	44
Bellwood	IL0584	28.45%	6440	1832
Bensenville	IL0899 IL0900	19.37%	6885	1333
Berkeley	IL0467	20.72%	1877	389
Berwyn	IL0360	20.75%	19702	4087
Bloomington	IL0725	21.96%	8219	1805
Broadview	IL0713	18.12%	3194	579
Brookfield	IL0606	21.48%	7536	1619
Carol Stream	IL0726	21.72%	13872	3014
Cicero	IL0473	21.25%	23115	4912
Elmwood Park	IL1075	24.32%	9858	2398
Forest View	IL0340	20.71%	302	63
Franklin Park	IL0362	24.17%	6484	1567
Glendale Heights	IL0404	18.96%	10791	2046
Harwood Heights	IL0876	25.84%	3505	906
Itasca	IL0727	21.76%	3179	692
Lincolnwood	IL0943	22.76%	4482	1020
Maywood	IL0492	21.45%	7937	1703
Melrose Park	IL0352	24.19%	7631	1846
Morton Grove	IL0326	22.26%	8199	1825
Niles	IL0520	19.91%	12002	2390
Norridge	IL0607	25.77%	5727	1476
Northlake	IL0397	23.20%	3873	899
Oak Brook	IL1362	20.91%	3124	653
River Grove	IL0371	19.34%	4404	852
Roselle	IL0728	26.26%	8443	2217
Rosemont	IL0466	21.50%	1692	364
Schiller Park	IL0615	25.14%	4244	1067
Stickney	IL0446	20.72%	2253	467
Stone Park	IL0322	24.43%	1265	309

Communities	CUIDs	CPR*	2000 Census Households	Estimated Competing MVPD Subscribers
CSR 7135-E (continued)				
Summit	IL0474	21.00%	3356	705
Willow Springs	IL0338	20.69%	1948	403
Wood Dale	IL0729	23.39%	5117	1197
CSR 7162-E				
Algonquin Hills	IL0137	33.81%	7706	2606
Barrington Hills	IL1420 IL1421 IL1422 IL1680	26.64%	1381	368
Carpentersville	IL0144	31.72%	8872	2815
Cary	IL0142	29.65%	4962	1471
Crystal Lake	IL0138	25.40%	13070	3320
East Dundee	IL0141	25.62%	1228	315
Elgin	IL0131	40.55%	31543	12790
Fox River Grove	IL0143	22.12%	1677	371
Lake in the Hills	IL0140	36.56%	7652	2797
Lakewood	IL0149	25.68%	815	209
Oakwood Hills	IL0163	29.42%	719	212
Sleepy Hollow	IL0550	26.72%	1185	317
South Barrington	IL1302	27.19%	1147	312
South Elgin	IL0500	35.52%	5565	1977
Trout Valley	IL1692	29.00%	197	57
West Dundee	IL0139	24.85%	2059	512

*CPR = Percent of competitive DBS penetration rate. CPRs may be not precisely accurate because of the use of fractional MVPD subscribers and rounding not stated above.